

Donald J. Kravet (DK-2772)
KRAVET & VOGEL, LLP
1040 Avenue of the Americas, Suite 1101
New York, New York 10018-3703
Tel. 212-997-7634

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
For Sale By Owner Magazine, Inc., and
Barbara Mallires and Steve Mallires formerly d/b/a
Worthington Publishing

08 CV 0570 (DAB)

Plaintiffs,
-against-

**PLAINTIFFS'
INITIAL DISCLOSURE
PURSUANT TO FRCP
RULE 26(a)(1)**

ForSaleByOwner.com,

Defendant.

-----x

Plaintiffs For Sale By Owner Magazine, Inc. and Barbara Mallires and Steve
Mallires formerly d/b/a Worthington Publishing ("Plaintiffs"), by their attorneys Kravet &
Vogel, LLP, for their initial disclosures pursuant to F.R.C.P. 26(a)(1), submit the
following:

A. Witnesses

Barbara Mallires (plaintiff): c/o Kravet & Vogel, LLP. Subjects of
discoverable information witness is likely to have include: (i) general background; (ii)
business/contractual relationship with defendant ForSaleByOwner.com ("FSBO"); (iii)
contractual negotiations with FSBO; (iv) breach of listing agreement by FSBO; (v)

Plaintiffs' damages; (vi) Defendant's counterclaims, including business relationship with HomesByOwner.com.

Steve Mallires (plaintiff): c/o Kravet & Vogel, LLP. Subjects of discoverable information witness is likely to have include: (i) general background; (ii) business/contractual relationship with FSBO; (iii) contractual negotiations with FSBO; (iv) Plaintiffs' damages; (v) Defendant's counterclaims.

Damon Giglio (present or former officer and agent of defendant FSBO): 60 East 42nd Street, New York, New York 10165. Subjects of discoverable information witness is likely to have include: (i) business/contractual relationship between Plaintiffs and FSBO; (ii) business/contractual relationship between other publishers and FSBO; (iii) contractual negotiations between Plaintiffs and FSBO; (iv) breach of listing agreement by FSBO; (v) Plaintiffs' damages; (v) Defendant's counterclaims.

Tom Finke (agent and officer of defendant FSBO): c/o ForSaleByOwner.com, 60 East 42nd Street, Suite 3007, New York, New York 10165. Subjects of discoverable information witness is likely to have include: (i) business/contractual relationship between Plaintiffs and FSBO; (ii) business/contractual relationship between other publishers and FSBO; (iii) contractual negotiations between Plaintiffs and FSBO; (iv) breach of listing agreement by FSBO; (v) Plaintiffs' damages; (v) Defendant's counterclaims and damages.

Colby Sambrotto (present or former officer and agent of defendant FSBO): c/o BizTrader.com, 60 East 42nd Street, Suite 659, New York, New York 10165. Subjects of discoverable information witness is likely to have include: (i) business/contractual relationship between Plaintiffs and FSBO; (ii) business/contractual

relationship between other publishers and FSBO; (iii) breach of listing agreement by FSBO; (iv) Plaintiffs' damages; (v) Defendant's counterclaims.

Information Technology representative(s) from FSBO (including but not limited to, Adam Nelson and Eric Schoenfeld) (agent(s) of defendant FSBO): c/o ForSaleByOwner.com, 60 East 42nd Street, Suite 3007, New York, New York 10165.

Subjects of discoverable information witness(es) is/are likely to have are: (i) information regarding FSBO website and sub-sites; (ii) Plaintiffs' damages; (iii) what specifically has/is being done to preserve data files, e-mails, and other documents and information which you and/or your client have identified as potentially discoverable materials or is otherwise subject to a "litigation hold"; (iv) the current company retention policy for electronic business records, data, documents and company e-mail communications, including any formal policies, and the initial date(s) of implementation; (v) the source systems where relevant ESI (electronically stored information) is stored; (vi) back-ups performed for the FSBO.com Internet web servers, file servers, e-mails servers, and other source systems where relevant ESI is stored; (vii) who is/has been responsible for maintaining back-up tapes, back-up servers and/or other back media for FSBO.com-related data; (viii) the different types of electronic document formats that have been/are used by FSBO.com to store electronic data; (ix) e-mail server software used by FSBO.com and current software version; (x) e-mail client software used by FSBO.com for individual employee users and current software version; (xi) data regarding the universe of homes listed for sale on the FSBO.com website which were/are located in a zip code that is part of plaintiffs' Territory; (xii) the methodology used to conduct searches of the FSBO.com website and calculate resulting data, as well as the method

to confirm the accuracy and validity of such searches; (xiii) the source code for the FSBO.com program(s) that route prospective customers (home sellers) by zip codes to dedicated “sub-sites”; (xiv) the method(s) and/or programming by which prospective customers (home sellers) have been/are routed or linked to FSBO.com’s place-listing webpage; (xv) any and all programming changes, fixes, and enhancements performed relating to the program(s) that route prospective customers (home sellers) by zip codes to the dedicated “sub-sites;” (xvi) complaints to FSBO.com by parties assigned a dedicated “sub-site;” (xvii) instances of FSBO.com having received notice (from any source) that prospective customers (home sellers) from anywhere in the United States should have been, but were not, routed to a “sub-site” assigned to an FSBO.com publisher; and, (xviii) any investigation, examination and/or analysis performed by or for FSBO.com and related results/findings of each such investigation, and any action(s) taken by FSBO.com in response to each such investigation, examination and/or analysis.

B. Documents

Documents will be produced consistent with the Discovery Plan, pursuant to the following categories:

1. Written agreements between FSBO and Plaintiffs.
2. Correspondence between FSBO and Plaintiffs relating to issues in dispute in this action.
3. Correspondence between Plaintiffs and HomesByOwner.com relating to the issues in dispute in this action.

4. Correspondence between Plaintiffs and other Publishers relating to the issues in dispute in this action.
5. Documents reflecting the misdirection of listings by FSBO.
6. Data reflecting homes listed on the FSBO website.
7. Business records for Plaintiffs relating to the issues in dispute in this action.
8. Financial data relating to claims and counterclaims in this action.

C. Damages

Plaintiffs seeks damages in an amount not less than \$4.6 million, representing the estimated value of lost sales which were occasioned by FSBO's failure to abide by the terms of its written agreements. Plaintiffs are also seeking declaratory relief as set forth in the Amended Complaint.

D. Insurance

Not applicable.

Plaintiffs reserve the right to modify and/or supplement the above information and related document production as necessary.

Dated: New York, New York
May 23, 2008

KRAVET & VOGEL, LLP

By: /s/ Donald J. Kravet
Donald J. Kravet (DK-2772)
A Member of the Firm

1040 Avenue of the Americas, Suite 1101
New York, New York 10018-3703
Tel. 212-997-7634
Attorneys for Plaintiffs